

Introduced by Senator Ackerman

January 27, 2005

An act to amend Sections 307, 5211, 7211, 9211, and 12351 of the Corporations Code, relating to corporations.

LEGISLATIVE COUNSEL'S DIGEST

SB 119, as amended, Ackerman. Corporations: board meetings.

Existing law provides that an action required or permitted to be taken by the board of specified corporations may be taken without a meeting if ~~the~~ *all* members of the board consent in writing to that action.

This bill would ~~also provide that the term "consent" includes the abstention of an interested director under certain conditions~~ *"all members of the board" does not include an "interested director" in certain cases if specified disclosures have been made to noninterested directors.*

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 307 of the Corporations Code is
- 2 amended to read:
- 3 307. (a) Unless otherwise provided in the articles or, subject
- 4 to paragraph (5) of subdivision (a) of Section 204, in the bylaws,
- 5 all of the following apply:
- 6 (1) Meetings of the board may be called by the chair of the
- 7 board or the president or any vice president or the secretary or
- 8 any two directors.

1 (2) Regular meetings of the board may be held without notice
2 if the time and place of the meetings are fixed by the bylaws or
3 the board. Special meetings of the board shall be held upon four
4 days' notice by mail or 48 hours' notice delivered personally or
5 by telephone, including a voice messaging system or by
6 electronic transmission by the corporation (Section 20). The
7 articles or bylaws may not dispense with notice of a special
8 meeting. A notice, or waiver of notice, need not specify the
9 purpose of any regular or special meeting of the board.

10 (3) Notice of a meeting need not be given to a director who
11 provides a waiver of notice or a consent to holding the meeting
12 or an approval of the minutes thereof in writing, whether before
13 or after the meeting, or who attends the meeting without
14 protesting, prior thereto or at its commencement, the lack of
15 notice to that director. These waivers, consents and approvals
16 shall be filed with the corporate records or made a part of the
17 minutes of the meeting.

18 (4) A majority of the directors present, whether or not a
19 quorum is present, may adjourn any meeting to another time and
20 place. If the meeting is adjourned for more than 24 hours, notice
21 of an adjournment to another time or place shall be given prior to
22 the time of the adjourned meeting to the directors who were not
23 present at the time of the adjournment.

24 (5) Meetings of the board may be held at a place within or
25 without the state that has been designated in the notice of the
26 meeting or, if not stated in the notice or there is no notice,
27 designated in the bylaws or by resolution of the board.

28 (6) Members of the board may participate in a meeting
29 through use of conference telephone, electronic video screen
30 communication, or electronic transmission by and to the
31 corporation (Sections 20 and 21). Participation in a meeting
32 through use of conference telephone or electronic video screen
33 communication pursuant to this subdivision constitutes presence
34 in person at that meeting as long as all members participating in
35 the meeting are able to hear one another. Participation in a
36 meeting through electronic transmission by and to the
37 corporation (other than conference telephone and electronic
38 video screen communication), pursuant to this subdivision
39 constitutes presence in person at that meeting if both of the
40 following apply:

1 (A) Each member participating in the meeting can
2 communicate with all of the other members concurrently.

3 (B) Each member is provided the means of participating in all
4 matters before the board, including, without limitation, the
5 capacity to propose, or to interpose an objection to, a specific
6 action to be taken by the corporation.

7 (7) A majority of the authorized number of directors
8 constitutes a quorum of the board for the transaction of business.
9 The articles or bylaws may not provide that a quorum shall be
10 less than one-third the authorized number of directors or less than
11 two, whichever is larger, unless the authorized number of
12 directors is one, in which case one director constitutes a quorum.

13 (8) An act or decision done or made by a majority of the
14 directors present at a meeting duly held at which a quorum is
15 present is the act of the board, subject to the provisions of
16 Section 310 and subdivision (e) of Section 317. The articles or
17 bylaws may not provide that a lesser vote than a majority of the
18 directors present at a meeting is the act of the board. A meeting
19 at which a quorum is initially present may continue to transact
20 business notwithstanding the withdrawal of directors, if any
21 action taken is approved by at least a majority of the required
22 quorum for that meeting.

23 (b) An action required or permitted to be taken by the board
24 may be taken without a meeting, if all members of the board shall
25 individually or collectively consent in writing to that action and
26 if the number of members of the board serving at the time
27 constitutes a quorum. The written consent or consents shall be
28 filed with the minutes of the proceedings of the board. For
29 purposes of this subdivision, ~~“consent” shall include the~~
30 ~~abstention of an interested director as described in Section 310~~
31 ~~where board action by written consent approves a transaction in~~
32 ~~paragraph (2) of subdivision (a) or paragraph (1) of subdivision~~
33 ~~(b) of Section 310 and the director recites his or her status as an~~
34 ~~interested director. For purposes of this subdivision, a director~~
35 ~~who has signed a consent that recites his or her status as an~~
36 ~~interested director with regard to a transaction shall be deemed to~~
37 ~~be an interested director. only, “all members of the board” does~~
38 ~~not include an “interested director” as described in Section 310,~~
39 ~~where the disclosures required by Section 310 have been made to~~

1 *the noninterested directors prior to their execution of the*
2 *consent.*

3 (c) This section applies also to committees of the board and
4 incorporators and action by those committees and incorporators,
5 *mutatis mutandis*.

6 SEC. 2. Section 5211 of the Corporations Code is amended to
7 read:

8 5211. (a) Unless otherwise provided in the articles or in the
9 bylaws, all of the following apply:

10 (1) Meetings of the board may be called by the chair of the
11 board or the president or any vice president or the secretary or
12 any two directors.

13 (2) Regular meetings of the board may be held without notice
14 if the time and place of the meetings are fixed by the bylaws or
15 the board. Special meetings of the board shall be held upon four
16 days' notice by first-class mail or 48 hours' notice delivered
17 personally or by telephone, including a voice messaging system
18 or by electronic transmission by the corporation (Section 20).
19 The articles or bylaws may not dispense with notice of a special
20 meeting. A notice, or waiver of notice, need not specify the
21 purpose of any regular or special meeting of the board.

22 (3) Notice of a meeting need not be given to a director who
23 provides a waiver of notice or consent to holding the meeting or
24 an approval of the minutes thereof in writing, whether before or
25 after the meeting, or who attends the meeting without protesting,
26 prior thereto or at its commencement, the lack of notice to that
27 director. These waivers, consents and approvals shall be filed
28 with the corporate records or made a part of the minutes of the
29 meetings.

30 (4) A majority of the directors present, whether or not a
31 quorum is present, may adjourn any meeting to another time and
32 place. If the meeting is adjourned for more than 24 hours, notice
33 of an adjournment to another time or place shall be given prior to
34 the time of the adjourned meeting to the directors who were not
35 present at the time of the adjournment.

36 (5) Meetings of the board may be held at a place within or
37 without the state that has been designated in the notice of the
38 meeting or, if not stated in the notice or there is no notice,
39 designated in the bylaws or by resolution of the board.

(6) Members of the board may participate in a meeting through use of conference telephone, electronic video screen communication or electronic transmission by and to the corporation (Sections 20 and 21). Participation in a meeting through use of conference telephone or electronic video screen communication pursuant to this subdivision constitutes presence in person at that meeting as long as all members participating in the meeting are able to hear one another. Participation in a meeting through use of electronic transmission by and to the corporation, other than conference telephone and electronic video screen communication, pursuant to this subdivision constitutes presence in person at that meeting if both of the following apply:

(A) Each member participating in the meeting can communicate with all of the other members concurrently.

(B) Each member is provided the means of participating in all matters before the board, including, without limitation, the capacity to propose, or to interpose an objection to, a specific action to be taken by the corporation.

(7) A majority of the number of directors authorized in the articles or bylaws constitutes a quorum of the board for the transaction of business. The articles or bylaws may not provide that a quorum shall be less than one-fifth the number of directors authorized in the articles or bylaws, or less than two, whichever is larger, unless the number of directors authorized in the articles or bylaws is one, in which case one director constitutes a quorum.

(8) Subject to the provisions of Sections 5212, 5233, 5234, 5235, and subdivision (e) of Section 5238, an act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present is the act of the board. The articles or bylaws may not provide that a lesser vote than a majority of the directors present at a meeting is the act of the board. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting, or a greater number required by this division, the articles or bylaws.

(b) An action required or permitted to be taken by the board may be taken without a meeting, if all members of the board shall individually or collectively consent in writing to that action and

1 if the number of members of the board serving at the time
2 constitutes a quorum. The written consent or consents shall be
3 filed with the minutes of the proceedings of the board. For
4 purposes of this subdivision, ~~“consent” shall include the~~
5 ~~abstention of an interested director as defined in Section 5233~~
6 ~~where board action by written consent approves a transaction~~
7 ~~described in subparagraph (C) of paragraph 2 of subdivision (d)~~
8 ~~or subparagraph (C) of paragraph (3) of subdivision (d) of~~
9 ~~Section 5233 and the director recites his or her status as an~~
10 ~~interested director. For purposes of this subdivision, a director~~
11 ~~who has signed a consent that recites his or her status as an~~
12 ~~interested director with regard to a transaction shall be deemed to~~
13 ~~be an interested director. only, “all members of the board” does~~
14 ~~not include an “interested director” as defined in Section 5233,~~
15 ~~where the disclosures required by Section 5233 have been made~~
16 ~~to the noninterested directors prior to their execution of the~~
17 ~~consent.~~

18 (c) The provisions of this section apply also to incorporators,
19 to committees of the board, and to action by those incorporators
20 or committees mutatis mutandis.

21 SEC. 3. Section 7211 of the Corporations Code is amended to
22 read:

23 7211. (a) Unless otherwise provided in the articles or in the
24 bylaws, all of the following apply:

25 (1) Meetings of the board may be called by the chair of the
26 board or the president or any vice president or the secretary or
27 any two directors.

28 (2) Regular meetings of the board may be held without notice
29 if the time and place of the meetings are fixed by the bylaws or
30 the board. Special meetings of the board shall be held upon four
31 days' notice by first-class mail or 48 hours' notice delivered
32 personally or by telephone, including a voice messaging system
33 or by electronic transmission by the corporation (Section 20).
34 The articles or bylaws may not dispense with notice of a special
35 meeting. A notice, or waiver of notice, need not specify the
36 purpose of any regular or special meeting of the board.

37 (3) Notice of a meeting need not be given to a director who
38 provided a waiver of notice or consent to holding the meeting or
39 an approval of the minutes thereof in writing, whether before or
40 after the meeting, or who attends the meeting without protesting,

1 prior thereto or at its commencement, the lack of notice to that
2 director. These waivers, consents and approvals shall be filed
3 with the corporate records or made a part of the minutes of the
4 meetings.

5 (4) A majority of the directors present, whether or not a
6 quorum is present, may adjourn any meeting to another time and
7 place. If the meeting is adjourned for more than 24 hours, notice
8 of an adjournment to another time or place shall be given prior to
9 the time of the adjourned meeting to the directors who were not
10 present at the time of the adjournment.

11 (5) Meetings of the board may be held at a place within or
12 without the state that has been designated in the notice of the
13 meeting or, if not stated in the notice or if there is no notice,
14 designated in the bylaws or by resolution of the board.

15 (6) Members of the board may participate in a meeting
16 through use of conference telephone, electronic video screen
17 communication, or electronic transmission by and to the
18 corporation (Sections 20 and 21). Participation in a meeting
19 through use of conference telephone or electronic video screen
20 communication pursuant to this subdivision constitutes presence
21 in person at that meeting as long as all members participating in
22 the meeting are able to hear one another. Participation in a
23 meeting through use of electronic transmission by and to the
24 corporation, other than conference telephone and electronic video
25 screen communication, pursuant to this subdivision constitutes
26 presence in person at that meeting if both of the following apply:

27 (A) Each member participating in the meeting can
28 communicate with all of the other members concurrently.

29 (B) Each member is provided the means of participating in all
30 matters before the board, including, without limitation, the
31 capacity to propose, or to interpose an objection to, a specific
32 action to be taken by the corporation.

33 (7) A majority of the number of directors authorized in the
34 articles or bylaws constitutes a quorum of the board for the
35 transaction of business. The articles or bylaws may not provide
36 that a quorum shall be less than one-fifth the number of directors
37 authorized in the articles or bylaws, or less than two, whichever
38 is larger, unless the number of directors authorized in the articles
39 or bylaws is one, in which case one director constitutes a
40 quorum.

(8) Subject to the provisions of Sections 7212, 7233, 7234, and subdivision (e) of Section 7237 and Section 5233, insofar as it is made applicable pursuant to Section 7238, an act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present is the act of the board. The articles or bylaws may not provide that a lesser vote than a majority of the directors present at a meeting is the act of the board. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting, or a greater number required by this division, the articles or bylaws.

(b) An action required or permitted to be taken by the board may be taken without a meeting, if all members of the board shall individually or collectively consent in writing to that action and if the number of members of the board serving at the time constitutes a quorum. The written consent or consents shall be filed with the minutes of the proceedings of the board. For purposes of this subdivision, ~~“consent” shall include the abstention of an interested director as defined in Section 7233 where board action by written consent approves a transaction described in paragraph (2) of subdivision (a) or paragraph (1) of subdivision (b) of Section 7233 and the director recites his or her status as an interested director. For purposes of this subdivision, a director who has signed a consent that recites his or her status as an interested director with regard to a transaction shall be deemed to be an interested director.~~ only, *“all members of the board” does not include an “interested director” as defined in Section 7233, where the disclosures required by Section 7233 have been made to the noninterested directors prior to their execution of the consent.*

(c) This section applies also to incorporators, to committees of the board, and to action by those incorporators or committees mutatis mutandis.

SEC. 4. Section 9211 of the Corporations Code is amended to read:

9211. (a) Unless otherwise provided in the articles or in the bylaws, all of the following apply:

1 (1) Meetings of the board may be called by the chair of the
2 board or the president or any vice president or the secretary or
3 any two directors.

4 (2) Regular meetings of the board may be held without notice
5 if the time and place of the meetings are fixed by the bylaws or
6 the board. Special meetings of the board shall be held upon four
7 days' notice by first-class mail or 48 hours' notice delivered
8 personally or by telephone, including a voice messaging system
9 or by electronic transmission by a corporation (Section 20). The
10 articles or bylaws may not dispense with notice of a special
11 meeting. A notice, or waiver of notice, need not specify the
12 purpose of any regular or special meeting of the board.

13 (3) Notice of a meeting need not be given to a director who
14 provided a waiver of notice or consent to holding the meeting or
15 an approval of the minutes thereof in writing, whether before or
16 after the meeting, or who attends the meeting without protesting,
17 prior thereto or at its commencement, the lack of notice to that
18 director. These waivers, consents and approvals shall be filed
19 with the corporate records or made a part of the minutes of the
20 meetings.

21 (4) A majority of the directors present, whether or not a
22 quorum is present, may adjourn any meeting to another time and
23 place.

24 (5) Meetings of the board may be held at a place within or
25 without the state that has been designated in the notice of the
26 meeting or, if not stated in the notice or there is no notice,
27 designated in the bylaws or by resolution of the board.

28 (6) Members of the board may participate in a meeting
29 through use of conference telephone, electronic video screen
30 communication, or electronic transmission by and to the
31 corporation. Participation in a meeting through use of conference
32 telephone or electronic video screen communication pursuant to
33 this subdivision constitutes presence in person at that meeting as
34 long as all members participating in the meeting are able to hear
35 one another. Participation in a meeting through use of electronic
36 transmission by and to the corporation, other than conference
37 telephone and electronic video screen communication pursuant to
38 this subdivision constitutes presence in person at that meeting, if
39 both of the following apply:

1 (A) Each member participating in the meeting can
2 communicate with all of the other members concurrently.

3 (B) Each member is provided the means of participating in all
4 matters before the board, including, without limitation, the
5 capacity to propose, or to interpose an objection to, a specific
6 action to be taken by the corporation.

7 (7) A majority of the number of directors authorized in the
8 articles or bylaws constitutes a quorum of the board for the
9 transaction of business.

10 (8) An act or decision done or made by a majority of the
11 directors present at a meeting duly held at which a quorum is
12 present is the act of the board. The articles or bylaws may not
13 provide that a lesser vote than a majority of the directors present
14 at a meeting is the act of the board. A meeting at which a quorum
15 is initially present may continue to transact business
16 notwithstanding the withdrawal of directors, if any action taken
17 is approved by at least a majority of the required quorum for that
18 meeting, or a greater number as is required by this division, the
19 articles or bylaws.

20 (b) An action required or permitted to be taken by the board
21 may be taken without a meeting, if all members of the board shall
22 individually or collectively consent in writing to that action and
23 if the number of members serving at the time constitutes a
24 quorum. The written consent or consents shall be filed with the
25 minutes of the proceedings of the board. For purposes of this
26 subdivision, ~~“consent” shall include the abstention of an~~
27 ~~interested director as defined in Section 9243 where board action~~
28 ~~by written consent approves a transaction described in~~
29 ~~subparagraph (C) of paragraph (3) of subdivision (d) or~~
30 ~~subparagraph (C) of paragraph (4) of subdivision (d) of Section~~
31 ~~9243 and the director recites his or her status as an interested~~
32 ~~director. For purposes of this subdivision, a director who has~~
33 ~~signed a consent that recites his or her status as an interested~~
34 ~~director with regard to a transaction shall be deemed to be an~~
35 ~~interested director. only, “all members of the board” does not~~
36 ~~include an “interested director” as defined in Section 9243,~~
37 ~~where the disclosures required by Section 9243 have been made~~
38 ~~to the noninterested directors prior to their execution of the~~
39 ~~consent.~~

1 (c) This section applies also to incorporators, to committees of
2 the board, and to action by those incorporators or committees
3 *mutatis mutandis*.

4 SEC. 5. Section 12351 of the Corporations Code is amended
5 to read:

6 12351. (a) Unless otherwise provided in the articles or in the
7 bylaws:

8 (1) Meetings of the board may be called by the chairman of
9 the board or the president or any vice president or the secretary
10 or any two directors.

11 (2) Regular meetings of the board may be held without notice
12 if the time and place of such meetings are fixed by the bylaws or
13 the board. Special meetings of the board shall be held upon four
14 days' notice by first-class mail or 48 hours' notice delivered
15 personally or by telephone, including a voice messaging system
16 or by electronic transmission by the corporation (Section 20).
17 The articles or bylaws may not dispense with notice of a special
18 meeting. A notice, or waiver of notice, need not specify the
19 purpose of any regular or special meeting of the board.

20 (3) Notice of a meeting need not be given to any director who
21 provides a waiver of notice or consent to holding the meeting or
22 an approval of the minutes thereof in writing, whether before or
23 after the meeting, or who attends the meeting without protesting,
24 prior thereto or at its commencement, the lack of notice to such
25 director. All such waivers, consents and approvals shall be filed
26 with the corporate records or made a part of the minutes of the
27 meetings.

28 (4) A majority of the directors present, whether or not a
29 quorum is present, may adjourn any meeting to another time and
30 place. If the meeting is adjourned for more than 24 hours, notice
31 of any adjournment to another time or place shall be given prior
32 to the time of the adjourned meeting to the directors who were
33 not present at the time of the adjournment.

34 (5) Meetings of the board may be held at any place within or
35 without the state which has been designated in the notice of the
36 meeting or, if not stated in the notice or if there is no notice,
37 designated in the bylaws or by resolution of the board.

38 (6) Members of the board may participate in a meeting
39 through use of conference telephone, electronic video screen
40 communication, or electronic transmission by and to the

1 corporation (Sections 20 and 21). Participation in a meeting
2 through use of conference telephone or electronic video screen
3 communication pursuant to this subdivision constitutes presence
4 in person at that meeting as long as all members participating in
5 the meeting are able to hear one another. Participation in a
6 meeting through use of electronic transmission by and to the
7 corporation, other than conference telephone and electronic video
8 screen communication pursuant to this subdivision constitutes
9 presence in person at that meeting if both of the following apply:

10 (A) Each member participating in the meeting can
11 communicate with all of the other members concurrently.

12 (B) Each member is provided the means of participating in all
13 matters before the board, including, without limitation, the
14 capacity to propose, or to interpose an objection to, a specific
15 action to be taken by the corporation.

16 (7) A majority of the number of directors authorized in the
17 articles or bylaws constitutes a quorum of the board for the
18 transaction of business. The articles or bylaws may not provide
19 that a quorum shall be less than one-fifth the number of directors
20 authorized in the articles or bylaws, or less than two, whichever
21 is larger.

22 (8) Subject to the provisions of Sections 12352, 12373, 12374
23 and subdivision (e) of Section 12377, every act or decision done
24 or made by a majority of the directors present at a meeting duly
25 held at which a quorum is present is the act of the board. The
26 articles or bylaws may not provide that a lesser vote than a
27 majority of the directors present at a meeting is the act of the
28 board. A meeting at which a quorum is initially present may
29 continue to transact business notwithstanding the withdrawal of
30 directors, if any action taken is approved by at least a majority of
31 the required quorum for such meeting, or such greater number as
32 is required by this division, the articles or bylaws.

33 (b) Any action required or permitted to be taken by the board
34 may be taken without a meeting, if all members of the board shall
35 individually or collectively consent in writing to such action and
36 if the number of members of the board serving at the time
37 constitutes a quorum. Such written consent or consents shall be
38 filed with the minutes of the proceedings of the board. For
39 purposes of this subdivision, ~~“consent” shall include the~~
40 ~~abstention of an interested director as described in Section 12373~~

1 ~~where board action by written consent approves a transaction~~
2 ~~described in paragraph (2) of subdivision (a) or paragraph (1) of~~
3 ~~subdivision (b) of Section 12373 and the director recites his or~~
4 ~~her status as an interested director. For purposes of this~~
5 ~~subdivision, a director who has signed a consent that recites his~~
6 ~~or her status as an interested director with regard to a transaction~~
7 ~~shall be deemed to be an interested director. only, “all members~~
8 ~~of the board” does not include an “interested director” as~~
9 ~~described in Section 12373, where the disclosures required by~~
10 ~~Section 12373 have been made to the noninterested directors~~
11 ~~prior to their execution of the consent.~~

12 (c) The provisions of this section apply also to incorporators,
13 to committees of the board, and to action by such incorporators
14 or such committees mutatis mutandis.

15 SEC. 6. It is the intent of the Legislature that the provisions
16 of this act that add the language “and if the number of members
17 of the board serving at the time constitutes a quorum” do not
18 constitute a change of law but instead make a clarification to
19 guide directors. It is also the intent of the Legislature that the
20 provisions of this act that delete the sentence “The action by
21 written consent shall have the same force and effect as a
22 unanimous vote of the directors” do not constitute a change of
23 law but instead delete superfluous language addressed by the
24 respective sections of law.